IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6297 of 2003

1. Mr.Thomas Frank and another ...Petitioners

vs.

1. Chandrashekhar Ramchandra Naik,
and others. ...Respondents

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Mr.A.B.Avad, for Petitioners.

MMr.N.M.Apte @ Ms.Veena Rahirkar, for Respondent no.1.

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**CORAM: R.M.S.Khandeparkar**,J.

**DATED: 1st November,2004**

**P.C.:-**

1. Heard the learned Advocates for the parties. Perused the records. The petitioners challenge the concurrent judgement and orders passed by the Courts below, decreeing the suit for eviction of the petitioners. While challenging the impugned judgements, the learned Advocate appearing for the Petitioners submitted that both the Courts below have found the petitioners to be in possession of the suit premises since prior to 1970. However, the Courts have held that the petitioners being the unlawful sub-tenants are not entitled for protection in terms of provisions of

Section 15 of Bombay Rent, Hotel and Lodging, House



Rates Control Act, 1947. Placing reliance in the decision of Learned Single Judge of this Court in the matter of "**Krishnaji Ganesh Vaidya since deceased by his heirs & others Vs. Triveniben Anant Virkar Shete and others**", reported in **2003(1) Bom.C.R. 738**, it was sought to be argued that the Courts below could not have decreed the suit for eviction of the Petitioners, once the Petitioners were found in possession of the suit premises since prior to year 1972.

2. Perusal of the judgements passed by both the Courts below, undoubtedly, disclose the finding that materials on record reveal that the suit premises were in possession of the petitioners since 1970, however, the documentary evidence produced by the Petitioners does not disclose the landlord and tenant relationship between the Petitioners and Respondent. As regards the documents produced on record, findings by the Courts below reveal that the document which has been produced referring to the date 1.2.1973 is merely a birth certificate of the petitioners. All other documents in the form of rent receipts relate

to the period after October,1985. In other words,



the documentary evidence produced on record to claim the relationship of landlord and tenant or to claim that the petitioners are the sub-tenants in relation to the suit premises consequent to the payment of rent to the original tenant relates to the period after October,1985. Undisputedly, there is no document on record to support the case of the petitioners that they are in possession of the suit premises since prior to year 1970 as sub-tenants in relation to the suit premises.

3. Section 15(1) of the said Act clearly prohibits unlawful sub-letting of the premises by the tenant. In other words, a tenant is not entitled to sub-let the premises without the consent of the landlord. Sub Section (2) of Section 15 of the said Act, however provides that such prohibition would not apply to the sub-lease created prior to 1.2.1973, irrespective of the fact that such sub-letting had no consent of landlord. In other words, if the sub-lease of the premises was created prior to year 1973, even without consent of the landlord, such sub-tenant is

entitled for protection from eviction in terms of provisions comprised under Section 15(2) of the said Act and that has been explained by the Learned



Single Judge of this Court in the case "Krishnaji Ganesh Vaidya since deceased by his heirs & others Vs. Triveniben Anant Virkar Shete and others".

4. Considering the provision of law comprised under Section 15 of the said Act and bearing in mind the ratio of the decision in the case "Krishnaji Ganesh Vaidya since deceased by his heirs & others. Vs. Triveniben Anant Virkar Shete & others", it is therefore, apparent that in case the sub-lease is created without the consent of the landlord on or after 1.2.1973, such sub-tenant is not entitled to claim protection from eviction and the landlord will be entitled to initiate proceedings in terms of provisions of law comprised in Section 13(1)(e) of the said Act.

5. In the matter in hand as submitted by the learned Advocate for the petitioners that though there is no clear finding that sub-lease was created after 1.2.1973, the concurrent finding of the court below is to the effect that there is no

lawful sub-tenancy created prior to 1.2.1973. That itself shows that the Courts below have not believed the contention of the petitioners that



they were inducted in the suit premises as the sub-tenants prior to 1.2.1973. This finding itself discloses that the Courts below have held that sub-tenancy in respect of the suit premises claimed by the Petitioners is not lawful as it has been created subsequent to 1.2.1973, since the documentary evidence relating to payment of rent produced on the record by the Petitioners relates to the period October,1985 and apart from the said documentary evidence, no other evidence is produced by the Petitioners in support of their claim.

6. Apart from the fact that the above finding is the finding of fact, both the Courts have arrived at the concurrent finding in that regard and therefore, there is no case for interference therein in exercise of writ jurisdiction under Article 227 of Constitution of India. Since the impugned judgements do not disclose any illegality and neither any finding therein is contrary to the materials on record nor

there is any finding which can be said to be perverse, there is no case for interference in the impugned judgments, and therefore, petition fails and hereby dismissed, with no order as to costs.



7. At this stage, learned Advocate for the petitioners requests for stay of the order passed today. There being no ground for stay of this order, the request rejected.

1.11.2004 (R.M.S.Khandeparkar, J.)